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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,331	12/16/2005	Marshall Graham Bailey	CAF-3490203	5977
25006 7590 06/19/2009 GIFTORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C. PO BOX 7021 TROY, MI 48007-7021				
EXAMINER KURTZ, BENJAMIN M				
ART UNIT		PAPER NUMBER		
1797				
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06/19/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/561,331

**Applicant(s)**

BAILEY, MARSHALL GRAHAM

**Examiner**

BENJAMIN KURTZ

**Art Unit**

1797

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5 and 7-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 7-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/003)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed 6/11/08 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. No copy of DE 3015665 has been received. US 4 322 288 claims priority to the German patent but does not indicate that it is the English language equivalent.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1, 2, 5, 7-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiseman US 6 530 482.**

Claim 1, Wiseman teaches a basket (22), the basket mounting a stack of screen assemblies (14, 18), with superposed screen assemblies separated from each other by

a respective flow directing tray (30), the stack of screen assemblies being provided with a flow distributor (36, 26, 28) formed and arranged so as to be switchable between a plurality of different flow directing configurations, including, a parallel processing configuration in which the flow distributor receives filtrate from a primary upper screen assembly and divides the filtrate into at least a first feed stream and a second feed stream and directs the feed streams onto the remaining screen assembly, and receives filtrate from a respective remaining screen assembly, from the respective flow directing tray, and an intensive screening configuration in which the whole of the filtrate from a primary upper screen assembly is directed onto a remaining screen assembly (fig. 1, 3, 4, col. 1, line 66 – col. 2, line 27, col. 3, lines 37-51). The recitation of the basket being suitable for use in a vibratory screening apparatus, for use in removing solids from a liquid and solids mixture feed is a recitation of intended use and does not further structurally limit the basket. Wiseman teaches at least one upper shaker screen and at least one lower shaker screen does not teach at least three screen assemblies. The addition of a third screen assembly is a mere duplication of parts. Mere duplication of parts has no patentable significance unless a new and unexpected result is produced, *In re Harza*, 124 USPQ 378 (1960). Also, the language in the specification of ‘at least one’ would lead one of ordinary skill in the art to add additional screen assemblies as desired for any particular application.

Claim 2, Wiseman further teaches a vibratory screening apparatus comprising a basket according to claim 1 and further comprising a static outer housing (12), the housing comprising: a base support (12) mounting a basket (22) in floating manner, a

vibrator device (24), the base support having a sump (38) and the housing having a feed device (36) formed and arranged for directing the fluid to be treated to the basket (fig. 1).

Claim 5, Wiseman teaches the plurality of flow directing configurations includes a restricted feed capacity configuration in which the whole of the feed is directed onto only one of the screen assemblies and the filtrate is exhausted directly from the apparatus without passing through the other screen assembly (fig. 3, 4, col. 3, lines 37-51).

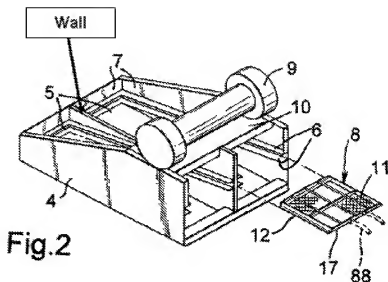
Claims 7 and 8, Wiseman teaches the basket of claim 1 but does not teach the screen assemblies having different mesh sizes from each other. Wiseman does teach as prior art a tiered or tandem shale shaker to effect a finer screening of mud on the second level (col. 1, lines 53-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a smaller mesh size on the remaining screen assemblies to provide a finer separation of the remaining screen assemblies. Having a smaller mesh size screen downstream from a larger mesh size screen is very well known in the filter art and would have been an obvious design choice to one of ordinary skill in the art.

Claims 9-12 and 14, Wiseman further teaches the flow distributor defines a plurality of flow pathways provided with flow control devices for selectively opening or at least partially closing of different passages (fig. 3, 4, col. 3, lines 37-51); the flow control device is a closure plate or valve (col. 3, lines 54-57); at least one flow control device comprises a weir (col. 4, lines 55-63); the weir being a variable height weir (col. 4, lines 55-63); and the flow distributor is mounted on the basket (fig. 3).

Claim 18, Wiseman further teaches the flow direction tray (30) is formed and arranged so that substantially the whole of the filtrate from a screen assembly (14) directly above the flow direction tray can be intercepted thereby (fig. 3).

**3. Claims 13, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiseman '482 as applied to claims 2 and 9 above, and further in view of WO 03/013690 (US 7 216 768 is the US equivalent).**

Claims 13, 16 and 17, Wiseman teaches the basket of claim 9 but does not teach the flow distributor including a wall. WO teaches a basket comprising a flow distributor comprising a wall/lateral divider (see below) formed and arranged to define a plurality of laterally adjacent flow pathways (fig. 2, below). The claim would have been obvious because all the claimed elements were known in the prior art and one skilled in the art could have combined the elements by known methods with no change in their respective functions and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (2007).



Claim 16, Wiseman further teaches the housing has a feed distribution device formed and arranged for directing material to the basket but does not teach a multi-basket assembly. Providing a multi-basket (5) assembly is known in the art as shown by WO. The claim would have been obvious because all the claimed elements were known in the prior art and one skilled in the art could have combined the elements by known methods with no change in their respective functions and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007). Also, the addition of another basket assembly is a mere duplication of parts. Mere duplication of parts has no patentable significance unless a new and unexpected result is produced, *In re Harza*, 124 USPQ 378 (1960).

Claim 17, Wiseman further teaches the housing has a feed distribution device formed and arranged for directing material to the basket but does not teach the basket

further includes a lateral divider defining independent feed processing modules.

Providing a lateral divider (wall, above) is known in the art as shown by WO. The claim would have been obvious because all the claimed elements were known in the prior art and one skilled in the art could have combined the elements by known methods with no change in their respective functions and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (2007).

**4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wiseman '482 as applied to claim 1 above, and further in view of Roff Jr. US 5 593 582 and Muller US 4 319 990.**

Wiseman teaches the basket of claim 1 but does not teach the flow distributor being coupled to the basket by flexible conduits. Roff teaches a flow distributor (65) that is attached to a stationary, in relation to a basket (35), housing for the basket (fig. 2-5). Muller teaches flexible conduits (59) for connecting inlets and outlets to and from the basket to stationary elements of a frame (fig. 4, col. 10, lines 54-68). Not having the flow distributor mounted on the basket but to a stationary frame is known in the prior art to Roff and coupling a basket's inlets and outlets to stationary elements is known in the prior art to Muller. The claim would have been obvious because a particular known technique was recognized as part of the ordinary capabilities of one skilled in the art, KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (2007).



***Response to Arguments***

5. Applicant's arguments filed 5/13/09 have been fully considered but they are not persuasive.

Applicant argues that the addition of a third screen assembly is not a mere duplication of part. Applicant states that Wiseman does not show or suggest a parallel operation condition. Wiseman teaches both a parallel and series configuration as claimed (abstract, col. 1, line 66 – col. 2, line 27). Wiseman also addresses the same problem of limited space for a screen assembly (col. 1, lines 52-59). Wiseman addresses all of the problems encountered by the applicant and uses the same methods as those of the applicant to solve those problems. Applicant argues that the claimed invention has achieved unanticipated results and commercial success. Applicant has not provided any evidence of commercial success or of any unanticipated results over the prior art.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN KURTZ whose telephone number is (571)272-8211. The examiner can normally be reached on Monday through Friday 8:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin Kurtz  
Examiner  
Art Unit 1797

/Krishnan S Menon/  
Primary Examiner, Art Unit 1797